S.B. CIVIL REVISION PETITION NO.255/2007

Surendra Singh and another.

vs.

State Bank of Bikaner & Jaipur.

Date : 26.10.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.J Gehlot, for the petitioners.

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Heard learned counsel for the petitioners.

The petitioners are aggrieved against the order dated 18.10.2007 by which the petitioners' application under Order 37 Rules 3 & 5 CPC was allowed but with condition to deposit Rs.1,50,000/-.

According to learned counsel for the petitioners, the respondent bank wrongly debited certain amount of other loan account in the present account. The bank also levied interest more than the rate of interest as agreed by the petitioner in the agreement and thereby, the respondent bank has levied more interest i.e.

0.25% or 0.50% more.

It is submitted that the Hon'ble Supreme Court in the case of M/s. Mechalec Engineers & Manufacturers vs. M/s. Basic Equipment Corporation reported in AIR 1977 SC 577, has laid down that when the triable issues are there, then conditions cannot be imposed for grant of leave to defend. The same view was taken by this Court in the case of M/s. Hotel Paras and another vs. M/s. Sound Vision reported in AIR 1999 Rajasthan 98.

I considered the submissions of learned counsel for the petitioner and perused the defence taken by the petitioner.

So far as the amount of loan is concerned, there is no dispute, therefore, the liability of the petitioner is not disputed.

The contention of the petitioner is that certain amount has been debited in this account and some interest has been levied more, then also, it is virtually a case where the Court has exercised its jurisdiction rightly and this is not case where the plaintiff's defence as such is against his liability so far loan is concerned. In view of the above, the facts of the cases referred above have no relevance with the facts of the case

at hand.

In view of the above, I do not find any merit in this revision petition and the same is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya